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of all Forms of
Racial Discrimination

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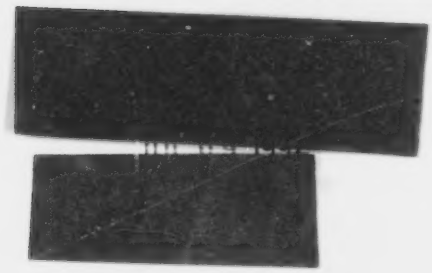
OF RACIAL DISCRIMINATION

REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9
OF THE CONVENTION

Fourteenth periodic report of States parties due in 1996



Addendum

Poland*

[16 January 1997]

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* This document contains the thirteenth and fourteenth periodic reports (consolidated), due on 4 January 1994 and 1995, respectively. For the twelfth periodic report of Poland and the summary records of the meetings at which the Committee considered that report, see documents CERD/C/226/Add.2 and CERD/C/SR.981-983.

The information submitted by Poland in accordance with the consolidated guidelines for the initial part of the reports of States parties is contained in the basic document HRI/CORE/1/Add.25.

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I. GENERAL

A. Ratification

1. The International Convention on the Elimination of All Forms of Racial Discrimination was adopted and ratified by Poland in 1968 (Journal of Laws: "Dziennik Ustaw" 1969, No. 25, items 187, 188).

B. Constitution

2. The principle of the elimination of racial discrimination has been expressed in the Constitution. At present, in Poland, the Constitutional Act of 17 October 1992 on the mutual relations between the legislative and executive institutions of the Republic of Poland and on local self-government - the so-called Small Constitution - is in force. In accordance with article 77 of this Act the Constitution of the Republic of Poland of 22 July 1952 ceased to be in force; however, some of its provisions have remained in force, including those regarding citizens' fundamental rights and obligations. Thus, article 67, paragraph 2, article 81 and article 82, paragraph 1, of the Constitution are still in force and they stipulate that:

> Article 67 paragraph 2: "Citizens of the Republic of Poland shall have equal rights irrespective of sex, birth, education, profession, nationality, race, religion, social status and origin".
>
> Article 81: "1. Citizens of the Republic of Poland, irrespective of nationality, race or religion shall enjoy equal rights in all fields of public, political, economic, social and cultural life. Infringement of this principle by any direct or indirect privileges or restrictions of rights by reference to nationality, race or religion shall be punishable.
>
> "2. The spreading of hatred or contempt, the provocation of discord or humiliation of man on account of national, racial or religious differences shall be prohibited."
>
> Article 82:
>
> "1. The Republic of Poland shall guarantee freedom of conscience and religion to its citizens. The Church and other religious organizations shall freely exercise their religious functions. Citizens shall not be prevented from taking part in religious activities and rites. No one may be compelled to participate in religious activities and rites".

C. The Convention within the framework of domestic law

3. The draft new Constitution, which at present is being prepared by the Constitutional Committee of the Polish National Assembly, includes provisions (art. 75) which stipulate that international agreements ratified by Poland are sources of law and have priority over the domestic law. As for now, however, since there is no constitutional norm which would regulate the relationship between the domestic law and the international law, such relationship has been

specified by the judicial decisions of the Supreme Court and the Constitutional Tribunal. The following are the most important of such judicial decisions:

(a) The resolution of the Constitutional Tribunal of 7 January 1992: "The Republic of Poland, through ratifying Covenants (international treaties), shall be bound by them and therefore they must be applied, inter alia by courts, and this shall be done in accordance with the principle of proprio vigore, unless the content and the formulation of an international treaty (Covenant) stipulates that it is not a self-executing law.";

(b) The resolution of the Supreme Court of 12 June 1992: "As long as it (the above-mentioned amendment of the Constitution) has not been introduced, it can be assumed ... that adopting a bill on the ratification of an international agreement results in the transformation of this agreement into the domestic law of statutory force. Since the Sejm has passed the bill on the granting of consent to the ratification of the Convention ... and it has been promulgated in the Journal of Laws: "Dziennik Ustaw", this means that the Convention has become equal with a statutory act and thus may be applied by courts like a statutory act with all the resulting consequences.";

(c) The decision of the Supreme Court of 15 June 1993: "The norms of the international law may and should be applied in the domestic legal relations and they do not require taking any additional transformational measures. This, however, refers to such norms of the Conventions or bilateral agreements which, at least in an implicit way, stipulate the intention to apply them within the scope of domestic law of the States parties, or the possibility of such application follows from the provisions contained therein or from other objective circumstances accompanying the conclusion thereof."

4. In accordance with the judicial decisions, the provisions of the domestic law may not conflict with the norms of the international agreements that have been ratified by Poland. Such norms, as well as the judicial decisions of the European Court of Human Rights, should be recognized as an important source for the interpretation of the Polish domestic law (decision of the Supreme Court of 11 January 1995).

5. The International Convention on the Elimination of All Forms of Racial Discrimination includes, inter alia, norms of self-executing character and, as such, they may and should be applied in Poland in a direct way.

D. Human rights

6. In the period covered by this report (1992-1996) Poland has ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms in the reading changed by Protocol Nos. 2, 3, 5 and 8. The European Convention entered into force in respect of Poland on 19 January 1993. The Republic of Poland also recognized in 1994 Additional Protocol Nos. 1 and 4 and submitted declarations on the recognition of the competence of the European Commission of Human Rights (art. 25, ECHR) as well as on the jurisdiction of the European Court of Human Rights (art. 46, ECHR) (both declarations have been in force since 1 May 1993).

7. Besides, in respect of Poland, the Optional Protocol to the International Covenant on Civil and Political Rights entered into force on 7 February 1992. It provides for the recognition of the competence of the Human Rights Committee to receive and examine communications from persons who claim to have been victims of the infringement of any of the rights specified in the Covenant by a State party thereto.

8. On 1 February 1995 the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment entered into force in respect of Poland. The first visit by the Committee for the Prevention of Tortures (CPT) took place from 1 to 12 July 1996.

9. Human rights are more and more widely promoted and taught in Poland. At several universities (e.g. Gdańsk, Poznań, Toruń, Lublin, Warszawa) human rights have become a subject of regular lectures. A number of monographs on human rights have been published. They are widely available in bookshops and libraries. The judicial decisions of the European Commission and Court in Strasbourg are widely published, both in professional publications ("Prokuratura i Prawo" - "Prosecution and Law", "Palestra" - "The Bar") as well as in daily papers (the legal supplement to "Rzeczpospolita" - "The Republic"). The Ministry of Justice organizes a number of training sessions for judges and prosecutors which are devoted to human rights. The Supreme Court organizes seminars on this subject. Particularly intensive training sessions are conducted by the community of attorneys as well as by the Association of Active Judges "Iustitia".

E. Demographic data

10. At present in Poland there are no official statistics concerning the number of national and ethnic minorities in Poland. After the Second World War it was declared that Poland had ceased to be a multinational country and no information on this subject was collected. During the national public census which will be conducted in the year 2000 the respondents will be expected to answer a question about their citizenship. Article 35 of the Act of 29 June 1995 on Public Statistics (Dz. U. No. 88, item 439) specifies the scope of personal data which may be collected in statistical research by virtue of statistical obligation. Article 8 stipulates that, by virtue of statistical obligation, the collection of some information, including information on race, is prohibited. Similar regulations are also included in the draft act on the protection of personal data already submitted to the Sejm, which prohibits processing personal data of a special character, including those revealing racial and ethnic origin. Also, the principles recommended by the international organizations regarding the methodology of public censuses do not allow for the collection of data on race and nationality in the meaning of ethnic origin. In view of the above, only approximate data are available, collected on the one hand by the Parliamentary Commission on National and Ethnic Minorities, and on the other hand by various associations of individual minorities.

11. According to the information from the Parliamentary Commission, the overall population of national minorities in Poland is between 1 million and

1.3 million people, i.e. 3-4 per cent of the whole population of the country. The number of the citizens of non-Polish nationality according to the two sources is illustrated by the table below.

Nationalities	Sources of data	
	Parliamentary Commission	National associations
Belorusian	250-350 000	400 000
Ukrainian	250-300 000	250-300 000
Lithuanian	15-20 000	30 000
Slovak/Czech	15-25 000	25-30 000
German	350 000	250-300 000
Jewish	8-10 000	6-10 000
Gypsy	25 000	3 000

12. There are also minorities of an emigration nature - mainly Greeks but also including Macedonians, Vietnamese, Palestinians, Kurds - numbering from several hundred to 2,000 people in total. Significant religious and ethnic minorities also include Karaims - about 200 persons - and Polish Tartars-Muslims - 3,000 members.

II. INFORMATION CONCERNING THE IMPLEMENTATION OF ARTICLES 2-7 OF THE CONVENTION

A. Article 2

1. Legal regulations

13. The Republic of Poland has undertaken to reject all forms of racial discrimination, and this principle has been elevated to the rank of a constitutional norm. There exist no legal acts which would allow the State authorities and State administrative organs to differentiate between citizens according to racial criteria, and no such acts may be enacted. On the contrary - all forms of racial discrimination are considered to be offences punishable by the penalty of deprivation of liberty (arts. 272, 273, 274, 276, 278, 280 of the Criminal Code). (Cf comments on art. 4 of the Convention).

14. There is an ordinary (complaints, appeals) and extraordinary (cassation) procedure of appealing against sentences and judicial decisions of courts; there is also a possibility of appealing against administrative decisions and then referring the case to the High Administrative Court as being incompatible with the law. Such a system ensures effective control over the decisions of State administrative organs and authorities.

15. If an act or omission of the organs, organizations and institutions which are obliged to comply with and exercise civil rights and freedoms has resulted in any infringement of the rights and freedoms specified in the Constitution or in other provisions of the law, the person whose rights have been violated is entitled to file a complaint to the Ombudsman. The Ombudsman is also competent to examine issues related to the protection of civil rights and freedoms in respect of foreigners, within the scope of the rights and freedoms to which they are entitled in Poland, as well as the rights of persons residing in Poland whose Polish citizenship has not been established and who at the same time are not citizens of another State. In case he ascertains, on the basis of the complaints and requests obtained, that a given binding provision of the law creates opportunity for an infringement of civil rights and freedoms, the Ombudsman may, among other measures, apply to the Constitutional Tribunal to ascertain the incompatibility of the legal act in question with the Constitution. In the period covered in this report, in none of the cases examined has the Ombudsman ascertained discrimination for racial reasons, and the few cases involving alleged national discrimination have not been confirmed. At the same time, in June 1995 the Ombudsman issued a statement in which he pointed to the disturbing phenomenon in some communities of the spreading of racial and religious hatred. In this statement the Ombudsman criticized the well-known sermon preached by a priest in Gdańsk, in which he incited intolerance against people who have not admitted "whether they come from Moscow or from Israel". This pronouncement has been condemned by the President and the Government of the Republic of Poland and criminal proceedings have been instituted against the priest.

16. Review of government policy on the national and local levels with respect to the elimination of racial discrimination is encouraged by the promotion of human rights in Poland as well as by the ratification by Poland of several conventions concerning human rights. (Cf. comments on part I).

17. The ban on financing, protection of and support for racial discrimination by any organization or individual has been guaranteed by virtue of articles 16 and 18 of the Criminal Code, which stipulate that guiding by another person of the execution of an unlawful act (perpetration through guiding), incitement, as well as aiding and abetting (including financing and moral aiding and abetting) of an unlawful act are punishable by the law. Pursuant to article 252 of the Criminal Code, also criminal suport, i.e. aiding the perpetrator in evading criminal responsibility (hiding and obliterating the traces of crime, etc.), as well as public incitement to a crime are punishable by the law (art. 280 of the Criminal Code).

18. The draft new Criminal Code, which is currently being prepared by the Sejm, retains all the existing regulations concerning racial discrimination and, moreover, in the part entitled "Offences against peace, mankind and war crimes", new articles are being introduced and they stipulate that punishment must be used against a person "who, with a view to exterminating in full or in part a national, ethnic, racial, political or religious group or a group which has a specific world outlook, who commits manslaughter or causes serious health injury or a member of such group" or, having the same intention, "causes such living conditions which put the members of this group in danger

of being biologically exterminated, or who uses means aimed at stopping births or forcibly takes away children from such group". Also, preparations for the commission of such offences are punishable by the law. Under penalty, it has also been prohibited to use violence or unlawful threat against persons or against an individual person on account of his national, ethnic, racial, political or religious affiliation, or on account of his being irreligious, as well as to incite the above-described acts.

2. Integrationist movements and organizations

19. In the Republic of Poland there are no massive movements or organizations of a multiracial character because the ethnic composition of Poland's population does not give rise to such a need. Poland is not a multiracial country. There are, however, about 120 associations of national and ethnic minorities. They are, above all, of a socio-cultural character. Such associations have been established by: Belorusians, Gypsies, French, Lithuanians, Germans, Ukrainians, Jews, Polish Tartars, Lemks, Slovaks, Mazurs, Greeks, Vietnamese, Russians and Armenians. The associations promote national culture and represent the social interests of individual nationalities. There are also inter-Church organizations whose objective is the rapprochement between individual denominations. These are: Polish Ecumenical Council, Biblical Society, Council of Evangelic Churches, Polish Buddhist Union and Polish Council of Christians and Jews.

3. Measures taken to guarantee equal rights to minorities

20. In order to safeguard proper development and full exercise of the rights of minorities, the Bureau for the Culture of National Minorities has been established in the Ministry of Culture and Art. At present the Bureau cooperates with 11 representative organizations of the following national and ethnic minorities in Poland: Ukrainian, German, Belorusian, Lithuanian, Tartar, Armenian, Karaim, Czech and Slovak. The responsibilities of the Bureau consist in supporting with funds cultural events organized by minorities, as well as publishing 21 periodicals. Besides, two investments are financed from the State budget: the construction of the Lithuanian Culture House in Puńsk and the construction of the Museum in Hajnówka (Belorusian minority). The General Conservator of Monuments provides supportive funds for the renovation of sacral monuments as well as for Orthodox Church cloisters and cemeteries.

21. In order to safeguard political rights of national minorities, in the Act on the Elections to the Sejm of 28 May 1993, a provision has been included by virtue of which the requirement of the percentage threshold (5 per cent) of votes cast in the whole country does not apply to the electoral committees of the registered organizations of national minorities. In the present composition of the Sejm there are four deputies who represent the German minority and one deputy of the Ukrainian minority (who ran in the capacity of a representative of a political party). Representatives of Belorusian, Lithuanian and Gypsy minorities also ran for the Sejm but did not obtain the required number of votes. In the Senate of the Republic of Poland there is one representative of the German minority. Representatives of national minorities also serve in representative organs of territorial self-government

(town and commune councils). The Belorusian minority is represented in Bialystok (3 council members out of the overall number of 50 seats), in Bielsk Podlaski (7 council members, including the chairman and the mayor, out of 28 seats), in Hajnówka (8 council members out of 28 seats), in Gródek (13 council members, including the chairman and the chief commune administrative officer, out of 18 seats); in the remaining communes Belorusian and Orthodox Church electoral committees have not been set up, although in some communes almost all councils are composed of members of the Belorusian nationality. The Lithuanians have put up their candidates in two communes - in Puńsk they won 15 seats out of the overall number of 18 (including the chief commune administrative officer) and in Sejny (the town) 2 seats out of the overall number of 18, and in the whole commune of Sejny district 6 seats out of the overall number of 18. The Germans have their representatives in a total of 60 communes (in Opole province they put up 320 candidates in 27 communes, winning 178 seats; in Katowice province 94 candidates won 35 seats and in the region of Opole Silesia they are present in 39 councils out of an overall number of 44 communes). Besides, they have their representatives in the town councils of Opole (2/45), Kędzierzyn Koźle (5/36), Kluczbork (3/32) and in Giżycko, Gdańsk and Elbląg 1 council member in each town. The Slovaks are represented altogether by 10 and the Ukrainians by 31 council members.

22. Broader access of national minorities to radio and television was guaranteed in the Act on Radio and Television of 29 December 1992, whereas on the basis of the Act of 7 September 1991 on the Educational System national minorities have the right to teach in their native language. (Cf. comments on art. 7 of the Convention).

B. Article 3

23. The Republic of Poland condemns all racial segregation and apartheid. This has been confirmed in the above-mentioned provisions of the Constitution, which stipulate that everyone shall enjoy civil rights, irrespective of their race; this has also been manifested by recognizing all forms of racial discrimination as offences. Until the time the apartheid policy in the Republic of South Africa was changed, Poland had not maintained any diplomatic or economic relations with this country.

C. Article 4

1. Offences relating to discrimination

24. The Polish Criminal Code recognizes all forms of racial discrimination as offences. Thus, the following articles provide, respectively:

Article 272: "A person who publicly incites conflicts motivated by national, ethnic, racial or religious differences or publicly commends such conflicts shall be liable to the penalty of the deprivation of liberty (...)".

Article 273: "Sect. 1. A person who commits an act specified in article 272 while using press or other means of mass information shall be liable to the penalty of deprivation of liberty (...).

"Sect. 2. A person who - with a view to disseminating it - makes, collects, keeps, carries or sends a letter, printing material, recording, film or another object containing the subject matter specified in article 272 shall be liable to the penalty of deprivation of liberty (...).

"Sect. 3. In the event of convicting for the offence specified in sect. 1 or sect. 2, the court may adjudicate the forfeiture of the tools and other objects which have been used in or have been intended for the commission of the offence, even if they are not the property of the offender".

Article 274: "Sect. 1. A person who publicly insults, derides or humiliates a group of people or an individual person on account of their national, ethnic or racial origin shall be liable to the penalty of deprivation of liberty (...).

"Sect. 2. A person who commits an assault against another person on account of the reason specified in sect. 1 shall be liable to the penalty of deprivation of liberty (...)".

25. The provisions of articles 16 and 18 of the Criminal Code, which are discussed more extensively in the comments on article 2 of the Convention, should also be recalled here; they stipulate that inciting to and aiding and abetting in the above-described offences (including financing them) shall be punishable with the same measure of punishment as the commission thereof.

26. As regards the illegality of and the ban on organizations aiming at racial discrimination, the following provisions of the Criminal Code may be applied:

Article 276: "Sect. 1. A person who participates in an association or an organized group whose objective is the commission of an offence shall be liable to the penalty of deprivation of liberty (...) (the penalty is higher if the association or the organized group is of an armed character - sect. 2).

"Sect. 3. A person who establishes an association or an organized group specified in sect. 1 or sect. 2, or is the leader of such group, shall be liable to the penalty of deprivation of liberty (...)".

Article 278: "Sect. 1. A person who participates in an association whose existence, structure or objective is to be secret to the State authorities, or which has been dissolved, or whose legalization has been refused, shall be liable to the penalty of deprivation of liberty (...).

"Sect. 2. A person who establishes such association or is the leader thereof shall be liable to the penalty of deprivation of liberty (...).

"Sect. 3. A person who takes the leadership in an association which has been dissolved or whose legalization has been refused shall be liable to the penalty of deprivation of liberty (...)".

27. It is also illegal and prohibited under penalty to organize a meeting with a view to committing an offence, or to conduct such a meeting (art. 279); the same applies to public incitement to disobedience, or violent opposition, against a binding legal act (including the Convention) (art. 282).

28. The available data indicate that within the three-year period 1992-1994 (data for 1995 not available) three indictments were brought to court invoking article 272 of the Criminal Code (incitement to conflicts); however, nobody has been convicted. In connection with article 274 of the Criminal Code (insulting, deriding or humiliating on account of national, ethnic or racial origin), in the same period 29 indictments were filed and a total number of 16 persons were convicted.

2. Control of associations and assemblies with a view to counteracting discrimination

29. The Act on Associations of 7 April 1989 (Dz. U. No. 20, item 104 with later amendments) introduces the principle of freedom of association which may be subject to only those restrictions which are stipulated by acts of law and which are necessary to safeguard the interests of State security or public order, as well as the protection of public morals or the protection of rights and freedoms of other people. Foreigners residing in the territory of the Republic of Poland may also set up associations. It is prohibited to establish associations which adopt the principle of absolute obedience of their members to the leadership. Any association is subject to registration by a competent provincial court. The court rules on the registration of an association after having established that its charter is in accordance with the provisions of the law. In the event it has been established that the activities of an association are incompatible with the law, a competent organ of the State administration may request the court that the association be dissolved. This will happen in particular when the activities of the association manifest blatant or persistent violation of the law or of the provisions of its charter, and there are no conditions for altering the activity so that it is compatible with the law or the charter. The court may also repeal a resolution of an association if the resolution is incompatible with the law or the charter of the association.

30. A simplified form of an association is an ordinary association, which does not have legal personality. The court, upon the motion of a prosecutor or a competent organ of the State administration, may prohibit the establishing of such association if its charter is incompatible with the provisions of the law. The above-mentioned regulations allow for the control of associations in order, among other things, to prevent their conducting discriminatory activity in any form prohibited by the law.

31. The Act on Associations of 5 July 1990 (Dz. U. No. 51, item 297) introduces the possibility of controlling associations with a view to preventing the commission of an offence. The commune's organ prohibits a public assembly if its aim or its taking place violates the provisions of the criminal statutes. Besides, the chairman of an assembly has the right to request a person who, through his behaviour, breaches statutory provisions to leave the assembly; he is also obliged to dissolve the assembly if its

participants do not comply with the directives of the chairman or if the proceedings of the assembly violate the provisions of the criminal statutes. An assembly may also be dissolved by a representative of the commune's organ if the chairman does not want to take such a measure.

D. Article 5

1. Right to equal treatment before the courts

32. Access to courts and other organs of court administration is regulated by the following legal acts:

(a) Code of Civil Procedure of 17 November 1964 (Dz. U. No. 43, item 296 with later amendments);

(b) Code of Criminal Procedure of 19 April 1969 (Dz. U. No. 13, item 96 with later amendments);

(c) Code of Procedure on Regulatory Offences of 29 May 1971 (Dz. U. No. 23, item 101 with later amendments);

(d) Labour Code of 26 June 1974 (Dz. U. No. 24, item 141 with later amendments);

(e) Act on Proceedings on Juveniles Matters of 26 October 1982 (Dz. U. No. 35, item 228 with later amendments);

(f) Code of Administrative Procedure of 14 June 1960 (consolidated text: Dz. U. No. 9, item 26 of 1980 with later amendments);

(g) Act on the High Administrative Court of 11 May 1995 (Dz. U. No. 74, item 368 with later amendments);

(h) Act on the Supreme Court of 20 September 1984 with later amendments (consolidated text: Dz. U. No. 13, item 48 of 1994);

(i) Act on the Ombudsman of 15 June 1987 with later amendments (consolidated text: Dz. U. No. 109, item 471).

33. None of the above Acts gives grounds for differentiating between people on account of their race, colour of skin, birth or national or ethnic origin. All the legal Acts must comply with the Constitution, and article 67, paragraph 2, of the constitutional provisions stipulates that citizens of the Republic of Poland have equal rights irrespective of their race or nationality (cf. the remarks in the general part of this report).

34. Article 7, sect. 2, of the Act on the System of the Common Courts of Law of 20 June 1985 (consolidated text: Dz. U. of 1994 No. 7, item 25 with later amendments) stipulates that "proceedings before common courts of law are conducted on the basis of equality of the parties, which have the right to defence as well as the right to appeal to the court of higher instance". An additional guarantee of the principle of equality of the parties is included

in article 8 of this Act, which stipulates that "a person who does not know the Polish language shall have the right to use his native language while appearing before court and to have the assistance of a translator provided free of charge". Further guarantees are included in article 62 of the Code of Criminal Procedure, which stipulates that "if a defendant does not know the Polish language, the decision on levelling the charges, on the indictment, as well as the judgements which are subject to appeal or those which conclude the proceedings, shall be served on or announced to the defendant with an accompanying translation", and in article 159, sect. 1, subparagraph 1, which prescribes that a translator shall be summoned "if there is a need to question a person who does not know the Polish language". The same obligation occurs when there is a need to translate a letter written in a foreign language into the Polish language and vice versa (sect. 2). Article 354 of the Code of Criminal Procedure, in turn, stipulates that the defendant with whom the court communicated through a translator "should, before taking the floor, have at least the final conclusions from the speeches of the parties translated".

35. In criminal proceedings (art. 69 of the Code of Criminal Procedure) there is also a possibility for a defendant who does not have a counsel for the defence of his own choice to request that a counsel for the defence be appointed by the court if the defendant can prove that he cannot afford the costs of the defence without prejudice to the necessary maintenance of himself and his family. A similar possibility emanates from the provisions of the civil law (art. 113 of the Code of Civil Procedure), since a natural person may request exemption from court fees by submitting a declaration to the effect that he cannot incur the fees without prejudice to the necessary maintenance of himself and his family, and the person exempted in full or in part from court fees has the right to apply for the appointment of his attorney (art. 117 of the Code of Civil Procedure).

2. Right to security

36. Use of violence, causing bodily injury, infringing bodily inviolability are recognized as offences and are prohibited under penalty by the Criminal Code. Additionally, the Act on the Police of 6 April 1990 (Dz. U. No. 30, item 179 with later amendments) and the Act on the State Security Bureau of 6 April 1990 (Dz. U. No. 30, item 180 with later amendments) penalize offences which violate the personal interests of persons through a transgression of rights or non-fulfilment of obligations while acting on duty, through providing personal information obtained during operational and investigative activities to persons other than the court of the prosecutor, or the use of such information against a person for purposes other than criminal prosecution, as well as the offence of obtaining explanations, testimony or a declaration with the use of violence, unlawful threat or moral cruelty. Besides, the personal interests of a man, including health, freedom, honour, inviolability of living quarters and secrecy of correspondence, remain under the protection of the civil law (arts. 23-24 of the Civil Code).

37. Pursuant to the regulations of the Civil Code (arts. 417-418) the State Treasury is responsible for any damage caused by State functionaries while on duty.

3. Election rights

38. Equal election rights and equal possibilities of participating in the conduct of public affairs are stipulated in the binding election law acts in Poland. These are:

(a) Act on the Elections to the Sejm of the Republic of Poland of 28 May 1993 (Dz. U. No. 45, item 205 with later amendments);

(b) Act on the Elections to the Senate of the Republic Poland of 10 May 1991 (consolidated text: Dz. U. No. 54, item 224 of 1994);

(c) Act on the Elections to Commune Councils of 8 May 1990 (consolidated text: Dz. U. No. 17, item 85 of 1996);

(d) Act on the Elections of the President of the Republic of Poland of 27 September 1990 (Dz. U. No. 67, item 398).

39. All the Acts guarantee universality, directness, equality and secrecy of elections. The right to vote is granted to all persons of Polish citizenship (as well as to stateless persons, provided they have been residing in Poland for at least two years in the elections to commune councils or five years in the elections of the President) who, on the date of the elections, are over 18 years of age. Election rights may not be enjoyed only by those persons who have been deprived of public rights by virtue of a final court judgement, who have been deprived of election rights by virtue of a final judgement of the State Tribunal, or those who have been legally incapacitated, in full or in part, by a final court judgement on account of mental disease or a mental deficiency. Any person who enjoys election rights is entered into the register of voters and everyone may file a complaint in respect of any inaccuracies in the register. In the event the complaint is not complied with, the person concerned has the right to file a complaint before court.

40. The criteria for eligibility and suffrage are identical in the elections to commune councils, whereas in the elections to the Sejm and the Senate the right to stand for election is granted to a Polish citizen who enjoys the right to vote if, on the date of the elections, he is over 21 years of age and has been residing in the territory of the Republic of Poland for at least five years. Any Polish citizen who is over 35 years of age and enjoys full election rights can run for President. Putting up a candidate for the presidential office (by social and political organizations or by voters) should be supported with the signatures of at least 100,000 voters.

41. The principle of the equality of elections has also been included in article 95 of the constitutional provisions, which has been maintained in force by the Small Constitution. This article provides that "The right to vote shall be enjoyed by any citizen who is over 18 years of age, irrespective of sex, national and racial origin, religion, education, period of residence, social status, profession, financial situation". The same principle is also stipulated in article 96: "Any citizen may be elected to the Sejm or the Senate if he is over 21 years of age, provided, however, he has been residing in the territory of the Republic of Poland for at least five years".

42. The accessibility of running for State offices may be illustrated by the following data: during the last presidential elections in Poland, 17 candidates for this office had registered; in the elections to the Sejm and the Senate, last organized on 19 September 1993, 10,587 candidates ran for the deputies' seats. This means that an average number of 23 candidates ran for each of the 460 seats, and the senators' seats were sought by 684 candidates, i.e. an average number of 7 candidates for each of the 100 senators' seats. In the elections to the commune councils, organized on 19 June 1993, 181,907 persons ran for a total of 51,926 seats.

4. Other civil rights

43. The right to free movement and to the choice of the place of residence is fully respected in Poland. The only possible exceptions in this field are the statutory limitations provided for in the Decree on the Areas Particularly Important for the Defence of the Country of 6 September 1951 (Dz. U. of 1951, No. 46, item 341) and in the Act on State of Emergency of 5 December 1983 (Dz. U. No. 66, item 297). Pursuant to the above-mentioned regulations the authorities may impose a curfew and introduce the obligation to obtain permission for a change of the place of permanent or temporary residence in respect of persons moving to another place, as well as the obligation to register at the new place within the period of 12 hours from the time of arrival.

44. The Polish criminal law stipulates a penalty of deprivation of liberty. A person sentenced to such penalty, among other things, may not, without the consent of the adjudicating organ, change the place of his permanent residence. The same restriction may be applied as a preventive measure in criminal proceedings.

45. The above-described restrictions of free movement, however, are not related in any way to any form of racial discrimination.

46. Pursuant to the Act on Passports of 29 November 1990 (Dz. U. No. 2, item 5 with later amendments) each Polish citizen, irrespective of his race, nationality or religion, has the right to obtain a passport and thus to freely cross the border and stay abroad. A passport may only be refused upon the motion of: (a) the court which conducts criminal or civil proceedings against the person who applies for the passport; (b) the Prosecutor General, if such person has become the subject of proceedings related to the taking over of prosecution for an offence committed abroad; (c) the organ which conducts against such person preliminary or executory proceedings in respect of an indictable offence or in a fiscal penal case. Besides, the issuance of a passport to a minor requires the consent of both parents or legal guardians (unless one of them has been deprived by the court of the right to decide thereof). Article 235 of the Code of Criminal Procedure provides that "in case of justifiable apprehension of an absconder, the interdiction to leave the country by the defendant may be used as a preventive measure; such interdiction may be combined with the withholding of the passport or the interdiction to issue such document". The decision on the use of such measure is made in the form of a judgement which is subject to appeal; however, until such a judgement is passed, the organ which conducts the proceedings may withhold the passport, but only for a period which does not exceed seven days.

47. The Act on Polish Citizenship of 15 February 1962 (Dz. U. No. 10, item 49 with later amendments) does not include any restrictions on account of race, nationality or religion in respect of the right to obtain Polish citizenship.

48. Apart from the general requirements of different sexes, proper age or the interdiction of bigamy, there are no restrictions in Polish law in respect of the right to contract marriage and choose a spouse. There are no restrictions either in respect of the right to possess property, both individually and in conjunction with others. The basic regulation in this field is included in article 140 of the Civil Code which provides that, "within the limits specified by statutory law and the principles of community life, the owner may, to the exclusion of other persons, use a thing in accordance with the socio-economic purpose of his right, and in particular may collect the fruits and other incomes from that thing. He may dispose of that thing within the same limits".

49. As regards the right to inheritance, the only limitation is stipulated in article 1059 of the Civil Code in which the inheritance of a farm is made conditional upon the fulfilment, at the opening of the succession, of one of the following conditions:

"(1) the heirs are permanent directly engaged in agricultural production or

"(2) have acquired vocational education to run agricultural production or

"(3) are minors or are learning a trade or attend school or

"(4) are permanently unfit for work".

50. The freedom of peaceful assembly and the freedom of association have already been discussed in the comments on article 4 of the Convention. It can only be mentioned here that there are some restrictions in this respect stipulated in the regulations on the state of emergency (specified in para. 43). In case of a state of emergency the State authorities may impose a ban on the convening and conducting of all types of assemblies (this, however, does not concern religious services and rites which take place on the premises of churches) and they may suspend the activities of all associations, unions, and social and professional organizations (again, with the exception of churches and religious unions).

5. The right to freedom of thought, conscience and religion

51. The right to freedom of thought, conscience and religion has been guaranteed by the Constitution in article 82 (cf. the general part of this report) and in article 83, which provides that "The Republic of Poland guarantees its citizens freedom of speech, of the press, of assembly and gatherings, of processions and demonstrations".

52. Besides, the Act on the Guarantees for Freedom of Conscience and Religion of 17 May 1989 (Dz. U. No. 29, item 155 with later amendments) is in force. Article 1 of this Act provides that:

> "1. The Republic of Poland guarantees each of its citizens freedom of conscience and religion.
>
> "2. The freedom of conscience and religion involves free choice of religion or beliefs as well as the expression thereof individually and in groups, privately and publicly.
>
> "3. Believing citizens of all denominations as well as non-believers have equal rights in public, economic, social and cultural life".

No one may be discriminated against on account of his religion or beliefs in the domain of religion. Citizens must not be compelled not to participate in religious services and rites or to participate in them (art. 6 of the Act). Foreigners and stateless persons residing in the territory of the Republic of Poland shall enjoy freedom of conscience and religion on a par with Polish citizens (art. of the Act). The above-mentioned articles are an extension of the constitutional guarantees (art. 82).

53. By virtue of enjoying freedom of conscience and religion people may establish churches and religious unions. Currently in Poland there are 112 registered churches and religious unions. The situation of 13 of them has been additionally regulated in the acts on the relations between the State and the relevant church. The remaining churches and unions function on the basis of entry into the register. Such duality is directed only at facilitating the regulation of the legal status of new religious unions. It does not cause any differences in the rights of such unions to perform their religious functions.

54. The Act on the Guarantees for Freedom of Conscience and Religion provides a possibility of requesting exemption from the military service and applying for a substitute service by persons who invoke their religious beliefs or the moral principles they profess. In cases of refusal the conscript is entitled to file a complaint to the administrative court.

55. The Act also guarantees the right to enjoy freedom of conscience and religion and to use objects necessary for exercising religious cults and practices by persons who discharge military service, remain in prison facilities and homes for detained juveniles, persons remanded in custody, those who remain in health service facilities as well as children and teenagers at holiday camps.

56. Persons who are members of churches and other religious unions and whose religious holidays are not officially recognized holidays may, upon request obtain leave from work or school for the period of time necessary to celebrate such holidays in accordance with their religion. The obtaining of the leave is conditional upon making up for the leave period during official holidays or in overtime.

57. The Act of 7 September 1991 on the System of Education (consolidated text: Dz. U. of 1996 No. 67, item 329), in article 12, paragraph 1, while recognizing the right of parents to bring up their children in a religious way, provides that primary public schools should organize religious instruction upon the request of parents, and secondary public schools upon the request of parents or the pupils themselves; after reaching majority, the pupils themselves decide whether to have religion classes.

58. Pursuant to the above-mentioned provision the Minister of National Education issued the Regulation on the conditions and the method of organizing religious instruction in public schools (of 14 April 1992 - Dz. U. No. 36, item 155). The provisions of the Regulation point to the voluntary character of studying religion or ethics. The wish to commence studying religion/ethics may be expressed in the simple form of a declaration. It has been emphasized that taking part in or abstaining from religion/ethics classes may not give rise to any form of discrimination by anyone. The final mark in the subject of religion/ethics does not influence a student's prospects of being promoted to the next class, and the certificate does not show to which of the religions the mark refers. Similar principles have been specified in the Regulation of the Minister of National Education of 3 July 1992 on the conditions required to guarantee the right to religious practices to children and teenagers who remain in correction and open youth establishments, as well as at holiday camps (Official Gazette: Monitor Polski No. 25, item 181).

59. In presenting the Regulation of the Minister of National Education of 14 April 1992, it should be added that it was appealed against by the Ombudsman to the Constitutional Tribunal as being allegedly incompatible with the Constitution. The Constitutional Tribunal confirmed in part the legitimacy of the Ombudsman's claims and declared that some of the provisions of the Regulation were incompatible with the legislation, in particular with the Act on the educational system. As a consequence of the judgement passed by the Constitutional Tribunal, the Regulation was amended on 25 August 1993 (Dz. U. No. 83, item 390).

60. The introduction of religion to public schools gave rise to one of the first applications (No. 23380/94) filed against Poland with the European Commission on Human Rights in Strasbourg, after Poland had acceded to the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Commission considered the application to be inadmissible (partly ratione temporis) as manifestly ill-founded. (Please find enclosed a copy of the decision*.)

61. The Republic of Poland guarantees its citizens the right to take part in religious practices and rites also through the mass media, and in particular through the all-Poland radio which, in the field of radio programmes for churches and minority denominations, plays an essential role. The basis for this policy is the agreements concluded with the Polish Ecumenical Council, the Seventh Day Adventists Church and the Union of Jewish Religious Communities in the Republic of Poland, and also by the practice, which has developed over many years, of cooperation between "Polish Radio" SA and

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* Available for consultation in the files of the Secretariat.

religious communities other than the ones mentioned above. Every Sunday, Program IV - Radio BIS airs a 10-minute broadcast in the series "Churches in Poland and in the world" (which primarily is informative) and a one-hour religious service or broadcast of one of the churches. Religious services are also broadcast (apart from Sundays) on church holidays and official holidays.

62. Apart from Programme IV - Radio BIS, minority churches prepare regularly in Programme II of the Polish Radio (once a week) reflections in the series entitled "Five minutes on the Bible", and Programmes I and III present both information and mixed broadcasts devoted to religious communities functioning in Poland (and also the religions of the whole world, religious movements, outstanding Church reformers, evangelists, etc.).

63. "Polish Radio" SA complies also with the request of those Churches and denominations which had not had, and do not have any special agreements with the Polish Radio. The following broadcasts may serve as examples: "Polish Muslims", "The Koran - Holy Book of Islam", "Judaism - Christianity - Islam: Common Roots and Fundamental Differences", "The Church of Mormons", "Pentecostalist Church", "Hare Krishna Movement", "Shintoism", "Polish Buddhists". A number of broadcasts have been of an extra-religious character: they have introduced people of different beliefs, presented the forms and models of the contemporary ecumenical movement, and taught tolerance. Such programmes are also being broadcast nowadays. A special event other than a broadcast (which, however, has found its reflection on the air) was organized in Warsaw on 30 November 1995. It was the session entitled "Pluralism and Tolerance", organized by "Polish Radio" SA together with the Polish Ecumenical Council and the Polish UNESCO Committee, and devoted to the cause of religious, national and ethnic minorities.

64. There are two provisions referring to "Christian values" under the Act on Radio and Television of 29 December 1992 (Dz. U. of 1993, No. 7, item 34 with later amendments). Article 8, paragraph 1, stipulates: "Programmes should respect religious feelings of the audience, and especially respect the Christian system of values." Article 21, paragraph 2, subparagraph stipulates: "Programs of public radio and television should (...) respect the Christian system of values, with the universal ethical principles being considered as the basis thereof." A group of members of Parliament lodged a claim before the Constitutional Tribunal. The claim alleged the incompatibility of the above-quoted provisions with the Constitution due to the violation of the principle of equality and the establishment of preventive censorship. The Constitutional Tribunal decided that there was no incompatibility of the questioned provisions with the Constitution because the former provisions create only a duty of respect for, and not a duty of being led by the values which are of universal, and not only of religious character.

6. Social, economic and cultural rights

65. Social, economic and cultural rights specified in article 5 (e) have been guaranteed in the constitutional provisions (arts. 68-73 and 84-85) and, apart from that, in the Labour Code of 26 June 1974, in the Act of 23 May 1994 on Trade Unions, in the Act of 14 December 1994 on Employment and Counteracting Unemployment and in the Act of 7 September 1991 on the System of Education.

66. More specific information concerning the guarantees for the rights of national minorities has been included in the comments on article 7 of the Convention and in the part discussing the right to freedom of conscience and religion. The right to equal participation in cultural activity, apart from constitutional guarantees, is also secured due to the support and subsidies from the State budget to cultural organizations of national minorities (cf. comments on art. 2 of the Convention).

67. The granting and enjoyment of the rights specified in article 5 (e) of the Convention are not in any way differentiated in respect of race, nationality or religion. The same principle applies to access to all places and facilities intended for use by the general public such as transport, hotels, restaurants, cafés, theatres or parks.

E. Article 6

68. The provisions of the Criminal Code described in the comments on article 4 of the Convention, which recognize all forms of racial discrimination as offences, as well as the principle of legalism binding in accordance with Polish law, which prescribes the institution of criminal proceedings in each case of a justifiable suspicion that an offence has been committed, satisfy the requirements of the Convention. Besides, the comments on article 2 of the Convention include a remark on appeal procedures (ordinary and extraordinary) against sentences, judgements and decisions, as well as on the competence of the Ombudsman.

69. There has also been mention of the responsibility borne by the State, pursuant to the provisions of the Civil Code, for any damage caused by State functionaries.

70. In accordance with article 415 of the Civil Code each person has the right to demand a remedy for the damage caused by another person through the other person's own fault. Compensation claims are also possible within the framework of criminal proceedings (adhesion claims).

F. Article 7

1. Education and teaching

71. The structure of the Polish educational system is specified by the Act on the System of Education of 7 September 1991 with later amendments. The system is based upon the principle of equality of rights and it is structured in the following way. At the age of seven a child begins education in a primary school. Education at the elementary level is obligatory and free of charge. The next stage includes vocational training (vocational schools - three years, technical colleges - four or five years) or general education (comprehensive secondary schools, so called lyceums). At this level education at State schools is also free of charge. Nowadays, so-called private social schools are being established and a tuition fee is charged for studying there. The decision as to which school a child will attend depends solely upon the parents' wishes and their financial situation. None of the schools may make the admission and the teaching of a child conditional upon his race, religion

or nationality. The admission to a school depends on the results of entrance examinations, qualification interviews and comparison of primary school certificates. The education in a comprehensive secondary school as well as in a technical college ends with the matriculation examination, so-called "matura". The passing of this examination is a prerequisite necessary to apply for taking entrance examinations to schools of higher education which, in case of studies in State schools - and they are in the absolute majority - are also free of charge, or to private schools of higher education which charge tuition fees. The studies take about five years. Such a system of education provides the possibility of obtaining a three-level education: primary (obligatory), secondary (vocational or general) and higher education.

72. The act on the System of Education also regulates the issue of organizing in primary and comprehensive secondary schools of native language classes for children of non-Polish nationality. Article 13 of this Act has the following reading: "A school or a public institution shall afford possibilities for its students to maintain the sense of national, ethnic, linguistic and religious identity and in particular to learn their native language as well as their history and culture". Paragraph 2 reads: "Upon the request of parents such teaching may be conducted in separate groups, classes or schools, in groups and classes with additional lessons of the native language as well as in inter-school instruction groups". Such statutory educational rights of national minorities are exercised at all levels of instruction, from kindergarten to primary schools and secondary schools of all types.

73. The Regulation of the Minister of National Education of 24 March 1992 on organizing instruction with a view to maintaining the sense of national, ethnic and linguistic identity of students who belong to national minorities (Dz. U. No. 34, item 150) makes this statutory provision more specific by showing the means to be used in exercising the educational rights of minorities as well as the meachnisms which coordinate the educational policy of the State in this field. Section of the Regulation reads: "The supervision over proper execution of the educational rights of national and ethnic minorities shall be exercised by the school superintendent". Section 3 reads: "Native language classes for national minorities shall be organized on a voluntary basis. They shall be organized by the director of the school (kindergarten) upon a written request of parents or legal guardians of children. In case of teenagers from secondary schools, the declarations expressing their wish to participate in native language instruction at school may be made by students themselves". Section 12 reads "The educational process at schools for national minorities as well as the instruction in the field of the arts shall promote respect for the world cultural heritage and the maintenance of regional traditions and culture".

74. In Poland, 18,795 persons learn their native language in 289 Polish institutions (schools and inter-school groups). To this aim 391 teachers have been employed. Native language instruction is being conducted for the Belorusian, Lithuanian, Ukrainian, Slovak and German minorities. Other data have been illustrated in the table below:

Languages	Institutions	Students	Teachers
Belorusian	53	4 085	83
Lithuanian	16	793	25
Ukrainian	86	2 491	105
German	115	10 587	150
Slovak	16	561	23

75. The objectives of the Charter of the United Nations, the Universal Declaration of Human Rights, and the United Nations Declaration and the Convention on the Elimination of All Forms of Racial Discrimination have found their place in the programming fundamentals which are currently being drawn up in the Ministry of National Education and which will specify the canon of general education, i.e. the knowledge and the skills emanating from academic scientific disciplines as well as the issues which would prepare students for proper functioning in a responsible way in a comtemporary democratic society. The programming fundamentals will constitute the only document formulated by the Minister of National Education which will specify the objectives for public schools and for the schools which have public status. They respect the obligations of the State which arise from the international legal acts.

76. Religious instruction for different denominations in public schools has already been discussed together with the remarks on the freedom of conscience and religion (art. 5 of the Convention).

2. Culture

77. The role of cultural associations of national minorities and inter-religious organizations has already been discussed in the comments on article 2 of the Convention.

3. Information

78. The data on the promotion of human rights in Poland have already been provided in the general part of this report.

79. The media play an important role in the dialogue with national minorities. Pursuant to the Act on Radio and Television of 29 December 1992 (Dz. U. of 1993 No. 7, item 34 with later amendments) the objectives of public radio and television include "taking into account the needs of national and ethnic minorities". Public Television - Programme I broadcasts every two weeks a half-hour programme devoted in turn to consecutive minorities and entitled "In our home". On the all-Poland radio, the theme of national minorities is presented first of all in news bulletins and as a subject matter of commentary and reportage broadcasts. In 1995 "Polish Radio" S.A. took part in the international contest under the banner "Tolerance against Racism and Xenophobia" organized by the Czech radio.

80. Individual national minorities have been guaranteed access to the radio, especially on the local level; they also publish their own periodicals.

81. The Belorusians publish three magazines and a student newspaper. In the "Orthodox Church Review" there is a supplement in the Belorusian language. Radio "Białystok" broadcasts radio programmes (15 minutes) in the Belorusian language every day except Saturdays; on Sundays and Fridays the broadcast lasts 30 minutes. The same radio also broadcasts programmes in the Lithuanian and Ukrainian language (three times a week). The Lithuanians publish a bimonthly and a magazine on Lithuania and the Lithuanian minority in the Polish language. A local TV programme "Television Courier" (Suwałki-Mazury regional edition) broadcasts every day a programme in the Lithuanian language.

82. The Ukrainian minority publishes 10 magazines in the territory of the whole country (including two which are devoted to the Orthodox Church religion, one for young people, one bilingual Ukrainian-Polish). Besides, a supplement in the Ukrainian language is published along with the "Ukrainian Review". Apart from the above-mentioned "Radio Białystok", also Radio "Olsztyn", "Elbląg", "Rzeszów" and "Szczecin" broadcast programmes in the Ukrainian language, mostly once a week.

83. The Gypsies publish one monthly, the Łemks three magazines, the Armenians one bulletin, the Polish Tartars a yearly publication, the Czechs and Slovaks one monthly.

84. The Jewish minority publishes three magazines (including one in the Polish language for young people). The vigorous E.R. Kamińska State Jewish Theatre in Warsaw is the centre of the Jewish culture.

85. The Germans publish 13 different magazines, bulletins and brochures, some of them bilingual. On Radio "Katowice" they broadcast once a week a one-hour programme of the Germany minority, in Radio Opole once a week the programme "Our Homeland", and Television Katowice broadcasts every two weeks a half-hour programme in the German language.

86. The essential role of radio programmes for churches and religious minorities has already been discussed in the comments on article 5 of the Convention.